

Exhibit B

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

5 S1 09 cR. 512 (LAP)
6 ABDUWALI ABDUKHADIR
MUSE,

7 Defendant.

8 -----X

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10
11 February 16, 2011
12 10:00 a.m.

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16 Before:

17 HON. LORETTA A. PRESKA,

18 District Judge
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1 APPEARANCES

2 PREET BHARARA
3 United States Attorney for the
4 Southern District of New York
5 BRENDAN MCGUIRE,
6 JEFFREY BROWN,
7 Assistant United States Attorneys

8 PHILLIP L. WEINSTEIN, ESQ.,
9 FIONA DOHERTY, ESQ.,
10 DEIRDRE D. von DORNUM, ESQ.,
11 Attorneys for Defendant
12 52 Duane Street
13 New York, New York

14 ALSO PRESENT:

15 STEVEN SORRELS, Federal Bureau of Investigation
16 FRANKLIN GARCIA, New York City Police Department
17 BRAD DUCKWORTH, Navel NCIS

18 ABDULAZIZ HUSSEN, Official Somali Interpreter

19 FATIMA DUALEH, Somali Interpreter

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21 THE CLERK: United States of America.

22 THE COURT: United States against Muse.

23 Is the government ready?

24 MR. McGUIRE: Yes. Brendan McGuire and Jeffrey Brown
25 for the government.

With us at counsel table is Special Agent Steven
Sorrels and Detective Franklin Garcia of the Joint Terrorism
Task Force and Special Agent Brad Duckworth of the Navel

1 Criminal Investigative Service

2 THE COURT: Good morning friends.

3 And is the defense ready?

4 MS. DOHERTY: We are, your Honor. Fiona Doherty
5 Federal Defenders for Mr. Muse. With me at counsel table are
6 my colleagues Deirdre von Dornum and Phillip Weinstein.

7 Also with us is a Somalian interpreter Fatima Dualeh.
8 Of course, our client at the end, Abduwali Muse.

9 THE COURT: Good morning.

10 Ms. Doherty, have you and your client had adequate
11 time to review the presentence report?

12 MS. DOHERTY: We have.

13 THE COURT: Is there any reason it should not be made
14 part of the record?

15 MS. DOHERTY: No, your Honor.

16 THE COURT: I have the fax which you folks sent in
17 this morning which is agreed upon added to paragraph 16 of the
18 PSR relating to the phone conversation.

19 MS. DOHERTY: That's right, your Honor. And as your
20 Honor knows, there were a dispute between the defense and the
21 government about the translation of the two calls that have
22 been at issue at the sentencing, the August 22 and August 23,
23 2009 calls from the MCC, and to avoid a Fatico hearing the
24 defense and the government decided what would be best is to
25 include both versions of these calls within the PSR and,

1 therefore, we provided to your Honor in bold the proposed
2 addition.

3 THE COURT: Yes.

4 With that change and that agreement, are there any
5 objections to the presentence report?

6 MR. McGUIRE: Not from the government, your Honor.

7 MS. DOHERTY: Your Honor, the defense just has two
8 relatively minor points.

9 THE COURT: Yes.

10 MS. DOHERTY: The first is with respect to paragraph
11 110 of the PSR.

12 THE COURT: Yes.

13 MS. DOHERTY: We just ask that be amended to clearly
14 reflect the fact that the to suicide attempts by our client,
15 Abduwali occurred in June of 2010 and not May.

16 THE COURT: Yes.

17 MS. DOHERTY: There is no dispute about that, your
18 Honor.

19 And also, then, in paragraph 17, the PSR notes that
20 the SAND measures expired in January and we just ask it also be
21 included that our client Abduwali is now in general
22 proposition.

23 THE COURT: Yes, Ma'am.

24 Any other objections to the presentence report?

25 MS. DOHERTY: No, your Honor.

1 THE COURT: Thank you.

2 With respect to the offense level computation, I
3 accept the findings of the presentence report set forth at
4 paragraphs 58 through 71 which conclude that a total offense
5 level of 41 is appropriate, including paragraph 72, and
6 actually extending to paragraph 85.

7 With respect to the defendant's criminal history, I
8 accept the findings of the presentence report set forth at
9 paragraphs 86 through 91 that conclude that a criminal history
10 category of I is appropriate.

11 Ms. Doherty, I have the defendant's sentencing
12 submission dated cover letter February 2, I have the
13 government's sentencing submission dated February 9 and I have
14 the defense reply submission dated February 14.

15 I also have letters from victims.

16 Are there any additional written materials I should be
17 looking at, counsel?

18 MR. McGUIRE: Not from the government, your Honor.

19 MS. DOHERTY: No, your Honor.

20 THE COURT: Thank you.

21 Ms. Doherty, would you like to speak on behalf of Mr.
22 Muse?

23 MS. DOHERTY: Yes, your Honor.

24 The defense is asking for a sentence of 27 years in
25 this case and we would like to emphasize from the outset that

1 nobody here is talking about a lenient sentence. Our client
2 pled guilty pursuant to a plea agreement with a stipulated
3 guideline range of between 27 and 33.75 years, and under the
4 terms of that plea agreement neither party can advocate for a
5 sentence outside the guideline range, so in asking for 27 years
6 the defense is asking for what can only be described as an
7 extraordinarily long sentence, one that is in the high end of
8 sentences imposed around the world for these types of offenses
9 and a sentence that will ring out powerfully to the
10 international community as strong deterrent.

11 And as in any sentencing proceedings, the primary
12 question here is what sentence is sufficient but not greater
13 than necessary.

14 Of course, the Second Circuit has made clear that the
15 parsimony principle is the driving force behind any sentencing
16 decision. Accordingly, the many question for the court is what
17 is the incremental value of the additional seven years that the
18 government is seeking here. Why is an extra seven years
19 necessary for this sentence to be experienced as both deterrent
20 and specific punishment?

21 It is our position that a sentence of 27 years is
22 amply sufficient to punish and deter our client. No more time
23 is necessary.

24 And I think in evaluating how our client will
25 experience these 27 years, the court should consider a number

1 of very important factors.

2 First, his age. And although I will come back to the
3 specific of the age question later on, no matter how the court
4 views it, there is really no doubt, no dispute that he is very
5 young, and that is true whether the court accepts the defense's
6 position that he was 16 at the time of the offense or relies on
7 the statements that were made to Detective Gallaway shortly
8 after the offense that he was between 18 and 19.

9 And, of course, when he made those statements he just
10 witnessed his three companions getting killed, he was shackled,
11 he was very different and chaotic circumstances, and a sentence
12 of 27 years is a very harsh punishment against somebody who was
13 clearly so young.

14 Now, in the context of deterrence, the government
15 actually uses his young age against him by pointing out that he
16 will still be relatively young when he is released from prison.

17 But, your Honor, if you run the numbers, he will be in
18 his mid-40s at the end of the 27 year sentence, and the court
19 can't evaluate this in a vacuum. The government says maybe he
20 will turn to piracy doesn't say anything about the actual
21 operation of piracy in Somalia. When he gets out in 27 years
22 the whole landscape in Somalia will be difference.

23 In considering the need for deterrence the court
24 should consider the life expectancy figures from Somolia. The
25 latest figure from the World Bank shows life expectancy for a

1 man in Somolia is 48 years.

2 I have the documents if you want to support it. I
3 already shared these with the government. He will be in middle
4 40s on a 27 year sentence. Somebody might argue he will be
5 held here in the United States, those life expectancies figures
6 don't hold up in Mr. Muse's position.

7 There is no doubt the conditions in Somolia that he
8 experienced up until he was arrested will continue to have a
9 powerful effect on him. It's beyond dispute the childhood
10 malnutrition continues to have an enduring health affect as
11 someone goes older. And when you are talking about Somalia,
12 you are not just talking about malnutrition, you are talking
13 about severe acute malnutrition as identified in the U.N.
14 report indicted by the defendant. The body doesn't get the
15 nutrition it needs to develop properly.

16 And I think sort of a clear indication to the court of
17 the health effects that Abduwali will face is evidenced in the
18 treatment that he has gotten so far at the MCC, the dental
19 treatment. BOP has already removed seven of his teeth and
20 identified two more that need to be extracted, and the decay of
21 teeth is a clear symptom of childhood malnutrition.

22 And the life expectancy figures also raise other
23 important issues. For woman in Somalia it's 51, for men in
24 Somalia it's 48, which means after 27 years there is
25 practically no chance that his parents will be alive when he

1 gets returned to Somolia.

2 Even for his siblings and his friends, they will be
3 edging up against those life expectancy figures after a
4 sentence of 27 years, and this is all to say why is a
5 significant a sentence of 27 years, why that provides enough
6 punishment and deterrence in this case.

7 A sentence of 27 years is much more extreme given
8 Abduwali's situation as a Somalian raised under these
9 conditions and it's much more severe and it is much more
10 extreme than a sentence that might be imposed on an American
11 where the life expectancy here is 76. That is almost a 30 year
12 difference, your Honor.

13 Next I would like to move on to the issue of the
14 alleged threat from the MCC, specifically, the issue of the two
15 phone calls that Abduwali made to Somolia on August 22 August
16 23, 2009.

17 The government imposed special administrative measures
18 on Abduwali for a year on the basis of its interpretation of
19 those calls. He was kept in isolation in a small room, no
20 religious services, no TV, no radio, severely limited access to
21 books. And although the government doesn't address the issue
22 of the calls a great deal in the submission, the PSR obviously
23 contains a lot of information on that and we would like to
24 address the issue of the calls head on.

25 Now, the chain of events that resulted in the SAND

1 measure began when a man named Gilbert Victor, who was a
2 hired captain of the boat Serenity told the FBI after two
3 months before his -- he told the FBI about two months before
4 his release he heard that Abduwali had sent --

5 THE COURT: From being held as a hostage?

6 MS. DOHERTY: Yes, your Honor, absolutely.

7 Mr. Victor was a member of the crew of the Serenity
8 that was hijacked about a month or so before the Maersk
9 Alabama, and what Victor told the FBI was that about two months
10 before his release he had heard that Abduwali had sent a
11 message from the MCC instructing that the captain of a
12 different ship, the Win Far 161 be killed.

13 Now, all of Abduwali's calls from the MCC and
14 identified two calls from August 2009 that they thought were
15 consistent with Gilbert's account, and in those two calls
16 Abduwali was talking to his mother and he told his mother he
17 made a promise when he was in Salat and he wanted this promise
18 to be fulfilled.

19 We spent a lot of time in our submission explaining
20 how the evidence surrounding these calls does not match up to
21 how the government has interpreted them. I think one of the
22 most significant issues is the timing of these two calls,
23 because the timing of the calls in late August 2009 doesn't
24 match up with Victor's account.

25 Victor said that he had heard about this threat in

1 mid-July of 2009 which was five weeks before the calls that the
2 government is relying on were actually made. Thus, purely as a
3 matter of timing the calls relied upon by the government could
4 not have been the source of the threat.

5 As we explain in our submission, the calls did not
6 concern the captain of the Win Far 161 in any way. The calls
7 were about a promise and we will go into heavy detail here that
8 we talk about in our submissions, but the calls were about a
9 promise that Abduwali made to a man of a different clan
10 concerning a promise to buy a car in exchange for services that
11 Abduwali had provided that man in Somalia who was aware of it
12 and Abduwali wanted to fulfill the promise and in the calls he
13 is asking his mother not to interfere with them.

14 And our explanation of the calls is supported by a
15 number of important concrete factors.

16 First, the text of the calls themselves. Your Honor
17 has those both in the PSR and in our submission. They reflect
18 the fact that the promise was made back when Abduwali was in
19 Somalia and before his capture by the U.S. Abduwali never
20 returned to Somalia after the capture of the Win Far so he
21 could not be discussing a promise about the Win Far when he was
22 in Somalia so the text just doesn't watch up.

23 Also Abduwali's mother and younger brother
24 independently confirmed to the defense that these calls were
25 about a car. And your Honor has an affirmation from Mohamad,

1 Exhibit G, talking about all that.

2 And also we provided the court with a separate
3 recording from the MCC which made explicit that that there was
4 a promise concerning Abduwali. That was what the promise was
5 about. And, of course, the captain of the Win Far was not
6 harmed.

7 Now, it's also significant that the government view of
8 the alleged threat relies on the account of one witness, and
9 that's Mr. Victor, the captain of the Serenity. And what do we
10 know about Mr. Victor?

11 Well, we know a number of things. And we talked about
12 this in our submission. I will just highlight the issues here,
13 but he has significant credibility problems, reputation for
14 drug smuggling, he lied to the FBI about who was on the
15 Serenity. He was under active investigation in the case shells
16 about what he was doing during the actual voyage from the
17 Seychelles to Madagascar that is at issue in this case.

18 But, again, even if the court were to accept Gilbert's
19 account, the timing and the story just doesn't match up.
20 Victor's owe account doesn't match the timing of the calls. So
21 there is no accurate reliable evidence that the court can use
22 on the basis of those calls to use those calls to increase
23 Abduwali's sentence by seven years. That's why that is
24 significant here.

25 I also would like to address the issue of leadership,

1 your Honor, because in the government's submission they rely
2 heavily on the fact that Abduwali played a leadership role.

3 THE COURT: I thought that was stipulated to.

4 MS. DOHERTY: You are right, your Honor, we do not
5 dispute in any way that Abduwali was the leader of the four men
6 or acted as the leader of the four men who took the Maersk
7 Alabama or tried to take the Maersk Alabama. But he is already
8 being punished extensively for that leadership role.

9 The stipulated guideline range includes a four level
10 enhancement for leadership which increases his offense level
11 from level 37 to 41. At offense level 37, which he would be at
12 if there were no leadership points, his guideline range would
13 be 210 to 262 months, in other words, 17.5 to 21 years. So
14 because of his leadership, the guideline range is bumped up by
15 ten years. That's already a significant punishment and gives
16 no cause for the court to go to the top of the guideline range
17 just to reflect his leadership, it is already amply reflected
18 in the guidelines.

19 And in the government's submission they express
20 Abduwali's leadership role too far and it is not supported by
21 the evidence.

22 On page 21 of their submission the government claims
23 that essentially everything concerning the hijacking of the
24 Serenity, the Win Far 161 and the Maersk Alabama was executed
25 "under the direction of one man."

1 This flies in the face of the expert report that the
2 defense provided to the court from Professor Cassanelli, who is
3 a faculty member of the University of Pennsylvania and also
4 directs that university's Center of African Studies.

5 In this report Dr. Cassanelli makes abundantly clear
6 that modern day piracy in Somolia relies on network supply and
7 financing that go way beyond what happens actually happens in
8 operations at sea and high-level organizers are not anywhere
9 near the actual operation, they leave that entire hand to get a
10 tiny cut of the proceeds. That is the landscape of the actual
11 piracy operations that are working in Somolia.

12 In its submission the government also attempts to
13 impute to Abduwali's leadership events that took place many
14 months after his capture when he was at the MCC.

15 For example, I don't think this is necessarily clear
16 from the government's submission, but Win Far 161 was captured
17 just two days before the attempted seizure of the Maersk
18 Alabama so Abduwali was involved in that for only two days, but
19 the Win Far was then held for approximately ten months in
20 Somolia before being released, but in discussing what happened
21 during these ten months the government repeatedly refers to
22 actions by Muse. At that time Abduwali is here. They can't
23 impute things that happened while he was here to actions that
24 occurred in Somolia.

25 In asking for a sentence of 27 years the defense has

1 asked the court to consider a number of factors.

2 His age, the sanctioning of piracy among officials in
3 Puntland where he lives, his desperate conditions prevailing in
4 Somolia, including the conditions he experienced when he grew
5 up, and also the mental health problems that he experienced in
6 BOP custody.

7 I know I put a lot of that in our submission so I
8 would like to highlight a few issues here and respond to some
9 of the government's arguments.

10 On the question of age, there are no birth records in
11 Somolia after 20 years of Civil War. What we tried to do is
12 provide the court with the next best thing. We provided
13 affirmations from his family, specifically from his mother and
14 his brother Mohamad where they clearly say he was 16 at the
15 time of the offense.

16 We also provided an affirmation from a man called
17 Akeem Al Ben Mohammed, and that man is a BBC journalist in punt
18 land, and he was hired by the defense, he worked for the
19 defense as an investigator and an interpreter in Somolia. He
20 makes clear and he has met Mohamad, Abduwali's younger brother,
21 in person and he makes clear, yes, he seems to be somebody, he
22 looks like somebody who is 16 or 17 years old. Mohamad is one
23 year younger than Abduwali. Given this, Abduwali is
24 approximately 18 years old now, two years after the offense.
25 All of that matches up.

1 In choosing to believe that Abduwali is 18 or 19 years
2 old, the government is choosing among contradictory statements
3 that were made immediately after the offense and it's also, of
4 course, relying on the preliminary age hearing that was
5 conducted by Magistrate Judge Peck.

6 But Judge Peck's ruling was not a determinative
7 finding on age, that was an issue that was made -- that was a
8 finding that was made at the presentment, a finding that needed
9 to be made on the spot because there was an immediate issue
10 whether the presentment should be open to the public, so it's
11 wasn't a final decision in any sense.

12 THE COURT: My understanding was that the defense did
13 not contest that finding for purposes of the plea.

14 MS. DOHERTY: That is absolutely right, your Honor.
15 This was an active issue on the table even after the
16 presentment, but then because of the plea the defense
17 effectively agreed to waive the issue of age for the plea, but
18 as the government knows, the defense reserves the right to
19 present arguments about age to your Honor.

20 Now, I want to talk very quickly about that age
21 hearing, because the government makes a lot -- takes a lot of
22 significance from the fact that the father made contradictory
23 statements and Abduwali didn't testify, but I think that the
24 government's arguments don't possibly reflects the chaotic
25 environment of my recollection.

1 My colleagues, Mr. Weinstein and von Dornum, had met
2 Abduwali for the first time about half an hour before the
3 hearing. He was injured, in pain, he spoke Mufti, not English.
4 No person in their right mind, no lawyer in their right mind
5 would put a client on the stand under those circumstances.

6 Also with regard to the contradictory statement or one
7 contradictory statement by the father, it is also important for
8 the court to understand the circumstances under which that
9 testimony was given. The father obviously was not in the
10 courtroom, it was done by a telephone line to Somolia. There
11 is no written record of what he actually said in Somolia, you
12 only have the translator's English version and she repeatedly
13 indicate had she was having trouble hearing. You can see it.
14 Even Judge Peck acknowledged that the father could easily have
15 misunderstood the question, so that is not a determinative
16 finding in any way.

17 But I think the main point to draw from all of this is
18 no matter what the court decides about how old he is, 16 or 18
19 or 19 at the time of the offense, he's very young. There is no
20 question about that. And that's also supported by the dental
21 records from the MCC that we talk about in their submission.
22 We just ask that the court take those things into account.

23 We also ask the court to consider the economic
24 conditions in Somolia, the malnutrition, hunting through the
25 garbage for food, working from the age of eight, living

1 independently without adults from the age of 11, the kind of
2 story that really is not imaginable here in the United States.
3 Without education, no support, hunger. These are the things
4 and the only things that drove him to get involved in the
5 conduct in this case. And we ask that the court evaluate all
6 of that in connection with what we know about the conditions in
7 Somolia.

8 We used a lot of United Nations reports in our
9 submissions to establish to the court the terrible drought and
10 malnutrition that are prevalent in Somolia. It's the worse
11 failed state of all failed states. It's led one policy
12 magazine fail state index now for three years running, and it's
13 the kind of place where children regularly work from an early
14 age, where children regularly are conscripted into the armed
15 forces to be part of the conflict. It's a brutal place for
16 someone to grow up.

17 And another important point for the defense is the
18 official sanctioning of piracy in Somolia, and for that we
19 presented to the court Professor Cassanelli's report. While
20 piracy is clearly illegal under international and United States
21 law, there is a very different governmental attitude about
22 piracy in Puntland. There is official sanctioning, complicity
23 and local officials taking part of the proceeds as payment. So
24 it's not experienced in the same way in Puntland as it would be
25 here in the United States.

1 And this is really getting to our last point, your
2 Honor, and all of this is about why a sentence of 27 years is
3 sufficient, sufficient in this case, but our last point is
4 mental health, the mental health problems.

5 And your Honor has a report from Dr. Crowle about the
6 mental health problems that Abduwali incurred at the MCC,
7 particularly over the last year when he was isolated in SAND.
8 And, of course, for Abduwali that is compounded BY the complete
9 isolation, being cut off from anything he has ever known. I
10 mean, it's a completely foreign institutional environment,
11 separated from family, from friends and just being isolated, I
12 think, in a way that an American maybe can't even understand.

13 And as the court is aware, Abduwali made several
14 suicide attempts in June of 2010, and during those suicide
15 attempts and even after he was experiencing auditory and visual
16 hallucinations and he couldn't distinguish between those
17 hallucinations and reality, and all of that is documented in
18 the MCC medical records.

19 And this is important because it expresses what
20 Abduwali has experienced in his almost two years of
21 incarceration in BOP custody and he has experienced this as
22 incredible punishment and deterrence already and we think it's
23 very important that the court take that into account.

24 Dr. Crowle has diagnosed Abduwali with depressive
25 disorder, severe TTFC and anxiety disorder. He talks about the

1 profound distress that Abduwali has experienced. And, of
2 course, these incredibly painful episodes for Abduwali have
3 enduring effect on his mental health and that is talked about
4 by Dr. Crowle as well.

5 Although Abduwali very recently is back in general
6 population, his experiences is, again, cut off from his
7 culture, his family, will continue to be very painful for him.
8 So we ask that the court consider all of these factors in
9 deciding what sentence is sufficient but not greater than
10 necessary in this case.

11 Thank you, your Honor.

12 THE COURT: Thank you, Ms. Doherty.

13 Mr. Muse, would you like to speak on your own behalf?

14 THE DEFENDANT (Through the interpreter): Yes.

15 THE COURT: Yes, sir. Would you do so now, please.

16 THE DEFENDANT: Yes.

17 I'm sorry, I'm sorry very much about what happened,
18 and what happened to the victims who are in the ship. I am
19 very, very sorry about that. Also what happened to them.

20 I am very, very sorry about what I caused and all of
21 that was due because of the problems that exist in Somolia.
22 From the time I was born until the time I was captured I have
23 never encountered these people who teach me something or people
24 who tell me something, and I was recruited by people who were
25 more powerful and more intelligent than me. I had the brains

1 to execute, but I did not have the brain to organize. I got my
2 hands into something that was more powerful than me and I have
3 been sorry for what I caused, for what I did for the past two
4 years, and even now it's possible that's what going to happen
5 to me I'll never be ordinary, and I'm very, very sorry about
6 that, and I ask for forgiveness to all the people that I harmed
7 and also the U.S. Government. I ask for forgiveness. That's
8 all I would like to say.

9 THE COURT: Thank you, sir.

10 Does the government wish to be heard?

11 MR. McGUIRE: Yes, your Honor.

12 We would like to just offer principally three points
13 in response to the defense's argument.

14 First, so we are all clear, the defendant sits before
15 the court today for sentencing for one reason and one reason
16 alone, his choices and his actions.

17 When he and his men attempted to hijack the Maersk
18 Alabama and the crew heroically resisted them, he as the leader
19 of that group could have chosen to leave and return to the Win
20 Far, the other ship that he had hijacked.

21 When the crew, after capturing him, agreed to release
22 him in exchange for Captain Phillips, rather than reneging on
23 that agreement and taking Captain Phillips hostage for another
24 four days, the defendant could have agreed, let Captain
25 Phillips return to the Maersk Alabama and he and his men return

1 to Somalia or the Win Far on the lifeboat.

2 And when the Navy showed up and he was in the shadow
3 of the Navy destroyer in the lifeboat with Captain Phillips,
4 he, again, could have chosen so surrender. These are his
5 choices, he was the leader and he chose not to.

6 To the defense's point about the structure of
7 piracy-related operations, there was no mention by the
8 defendant over the course of a six weeks of these three
9 hijackings and certainly no mention during the four days of
10 negotiations with the U.S. Navy of any boss, of anyone that he
11 had to report to, of anyone's approval he needed to let the
12 captain go. He repeatedly boasted that he was the leader and
13 that these were his decisions.

14 Today he has to face the consequences of those choices
15 and he should be held to full account for his actions.

16 Secondly, the defendant's conduct in this case is
17 simply put horrific. The government has detailed it to a great
18 degree in the sentencing submission so I will not go through it
19 again for the court. His actions speak for themselves and it
20 is clear the trauma that they have caused is impossible to
21 measure.

22 The principal reason for that is not simply the
23 actions themselves, because in this case the defendant not only
24 committed these actions, he reveled in them, he relished in the
25 suffering of his victims, whether it was playing Russian

1 roulette with them, whether it was threatening to cut one of
2 them up and sell his organs or whether it was assembling an IED
3 in front OF them and planting it in front of a hostage and
4 threatening to detonate it if they were discovered.

5 None of this was necessary for the defendant's overall
6 objective, which was a ransom payment. This was all just done
7 for the sake of it, seemingly for his own and his men men's
8 enjoyment. He could have achieved the same effect without any
9 of this and without simply telling -- by simply telling those
10 who he was negotiating with in fact he was doing this but he
11 need not actually have done it, but he did it and he seemed to
12 relish it.

13 And in addition when he was caught, when he was
14 arrested, he was unrepentant. When asked what happened after
15 waiving his Miranda rights, he lied to the interviewing agent
16 and he told him he was forced to do it at gunpoint by other
17 men.

18 And then, of course, as defense commented on at
19 length, there are the calls from the MCC in which, as the
20 defense concedes, whatever the interpretation may be, he
21 continued to engage in piracy related activity from the MCC.

22 The effects of his acts have proven unbearable for
23 many of the victims and, of course, they are multiplied out to
24 the victims' families. For many their effects will no doubt be
25 both profound and lasting and certainly it appears for many

1 those effects will last beyond 27 years, 33.75 years or
2 whatever sentence the defendant receives because it appears
3 that a number of these individuals will suffer for the rest of
4 their lives.

5 Thirdly and finally, the defendant's conduct here
6 completely dwarfs any arguments made in mitigation by the
7 defense, whether individually or in the aggregate. None of
8 what the defense is arguing justifies a sentence at the bottom
9 end of the guideline range here.

10 As to the issue of age, again, the government
11 addresses this in its memo. The defendant has used his
12 youthful appearance as a tool for leniency since the moment he
13 was arrested that's why he provided multiple ages.

14 Magistrate Judge Peck found that the defendant was a
15 adult. For the last nearly two years while this case has been
16 pending before your Honor he has been prosecuted as an adult.
17 His conduct makes clear that he is an adult and today he should
18 be held to account as an adult for the consequences of his
19 actions.

20 Finally, the defense makes some suggestion in their
21 initial papers and then they press the argument in their reply
22 papers that notwithstanding the fact that the Navy allowed the
23 defendant to surrender on April 12, notwithstanding the fact
24 that the U.S. Government employed every resource it had in
25 order to attempt to achieve a peaceful resolution to the crisis

1 caused by the defendant and notwithstanding the fact that the
2 Navy employed the assistance much Somalia elders, the defense
3 suggests and presses in its reply brief that, in fact, the
4 three men, Muse's three men had agreed to surrender and when
5 they did that the Navy shot them anyway.

6 This argument is outrageous. It is outrageous. It
7 flies in the face of the evidence and it defies common sense.
8 The defendant and his men forced the U.S. Navy to be heroes
9 that day and heroes they were and that was it, plain and
10 simple.

11 The breadth and the depth of the suffering that this
12 man has caused is extraordinary. 53 men from six countries
13 over the course of six weeks crossed his path. They were
14 victimized hundreds of miles out at sea isolated from what they
15 knew simply because they were trying to do their jobs. And as
16 I mentioned earlier, the suffering is multiplied because of the
17 trauma that has now been experienced by all of their family
18 members.

19 He was the leader. He was the first one on board. It
20 will be his face that they remember. It will be his voice that
21 they hear and it will be his laugh that will haunt them.

22 The sentence today, your Honor, not only needs to
23 reflect the seriousness of his offenses, not only needs to
24 reflect the need to protect the public from this man, but it
25 also needs to reflect the need for general deterrence in this

1 area, and respectfully the government submits the sentence in
2 this case should send an unmistakable message to anyone who
3 would considered attacking an American ship or praying on
4 defenseless American sailors.

5 For all of those reasons, a sentence at the bottom end
6 of the applicable guideline range is simply insufficient and
7 the government respectfully requests that the court sentence
8 the defendant at the top end of the guideline range to a
9 sentence of 405 months.

10 Thank you.

11 THE COURT: Thank you, Ms. Mcguire.

12 Ms. Doherty, would you like to respond?

13 MS. DOHERTY: Yes. A couple of points that the
14 government raised, one, being that Abduwali in the moments he
15 was taken particularly into custody was unrepentant and gave a
16 false statement.

17 I think the court could evaluate the circumstance
18 under which that statement was made. He was terrified. He had
19 just witnessed his three companions getting killed and he felt
20 that given the circumstances of what he experienced at the
21 shooting he couldn't trust them at that point to tell the
22 truth, but now he has said exactly what happened and he has
23 taken responsibility for his role in the context of what
24 happened on the Maersk Alabama.

25 Also I just want to respond briefly to the

1 government's point about how Abduwali experienced the shooting
2 of his three companions and his belief that they were in the
3 process of surrendering when they were killed.

4 The defense presses this issue in response to the
5 government's argument in its reply memorandum so the court
6 could see that we were by no means pulling any of this out of
7 thin air and there is evidence that an agreement had been
8 reached and that the three men had agreed with Abduwali to
9 release the captain, and one of the things we presented to the
10 court was an affirmation by Serion, who is the Somali elder
11 that the Navy reached out to discuss coming, really to have the
12 authority be involved in the peaceful resolution of this. And
13 Mr. Weinstein and I traveled to Africa and we personally met
14 with Serion and he gave us this account which is now reflected
15 in the affidavit and that is that his understanding was that
16 the men had agreed to be released without condition.

17 Whether all of this is relevant, I think it is only
18 relevant to the extent Abduwali's experiences of all of this,
19 how he understood and the interpreted the shooting of the men,
20 how terrified he was and how that, too, is powerful punishment
21 and deterrence as experienced by our client.

22 Thank your Honor.

23 THE COURT: Thank you.

24 Ladies and gentlemen, I understand there are victims
25 present who wish to be heard.

1 Would you come forward, ladies and gentlemen, to the
2 podium.

3 Would you state your name clearly and then I am happy
4 to listen to what you have to say. Sir.

5 MR. WRIGHT: My name is Cullin Wright and I was the
6 third officer on board the Maersk Alabama during the hijacking.

7 THE COURT: Yes, sir.

8 MR. WRIGHT: I would like to say what happened to us
9 was terrible and it has changed me. I'm not the same person
10 that I used to be and I never will be.

11 I would like to say that the defendant was the leader
12 of the group. He was the first person aboard to hold us at
13 gunpoint on the bridge. I was forced to go down and lower
14 ladder so the rest of the other two pirates could come aboard
15 the whole time at gunpoint.

16 They shot at us and at me from the boat on to the ship
17 and bullets RANG off the bulkhead right next to me. It's a
18 very, very scary experience.

19 Now, during the time that we spent on board there were
20 three of us on the bridge, the captain and ATF Raffer, which is
21 an AB, and I was on the bridge being held the entire time. The
22 rest of the crew were at the steering room and they barricaded
23 themselves in there and it was very hot. We are near the
24 equator and at the steering was approximately 130 degrees, 140
25 degrees. Now, these men stayed in that at the steering room

1 for about eight hours and by the time them got out they were
2 bearing able to walk and the experience for them was very
3 traumatizing.

4 The defendant and his three companions had many
5 chances to leave the ship. They were given the money from the
6 safe and they had an opportunity to leave the ship and leave us
7 to go on our way. They would not do that.

8 After our crew captured the defendant and made the
9 deal to exchange the captain for the defendant, there was a
10 goods chance for them to go off and we would not have been able
11 to catch them. Instead, they took our captain and we were
12 forced to get our ship operational in a very short time with
13 every man in very bad shape, barely able to walk, but we were
14 able to chase the lifeboat with our captain for seven hours and
15 able to corral the lifeboat so it could not get away and get
16 out of our sight.

17 It took nearly eight hours for the Navy to arrive
18 after we had gotten the pirates off of the ship. So the whole
19 time very, very bad, but the crew was able to work through it
20 and I believe we saved our captain from going off into the
21 night.

22 Now, it was pretty bad. I was told before I went to
23 the ship that we would stay at least 300 miles off the coast of
24 Somolia. There were already attacks that were happening, they
25 were all pretty close a hundred, 200 miles off the coast of

1 Somolia. When our ship was captured, we were 230 miles off the
2 coast. Captain Phillips had been aboard approximately a week
3 and in that time he had had at least seven e-mails telling him
4 to stay 600 miles off the coast of Somolia. He did not do
5 that. Also when he took over from the previous captain, that
6 captain told him you should say 600 miles off the coast of
7 Somolia.

8 So the captain, for his reasons, put us in a very bad
9 situation, and as counsel stated, defenseless. We have pocket
10 knives and fire hoses to combat pirates, and since then on the
11 Alabama they have put a secure team, but for the other Maersk
12 ships that travel through that area, they don't have any
13 security.

14 I was on a ship last year that went through that area.
15 We had a military cargo on board. They put four security
16 personnel when we got to the Red Sea. We delivered our cargo
17 in the Persian Gulf and as soon as the cargo was off they took
18 the security off. We're still in pirate waters without any
19 security, and I just wonder was the security for the cargo or
20 for the men. Also they disabled the firearms on board when
21 they left.

22 I believe there are still nevertheless 700 crew
23 members being held captive by the pirates and our security has
24 not been imposed very much since the event and I would like to
25 see something done about that.

1 Counsel has said that a lenient sentence is in order
2 because of his upbringing and malnutrition. I don't believe
3 that is true. I think he needs to serve the extra seven years
4 in an American prison where he can have proper food. He also
5 may need seven additional years for his mental illness to be
6 treated.

7 And we're not talking only about piracy that he has
8 done, he is responsible for the deaths of his three companions.
9 27 years is a very light sentence for that and I believe 34
10 years is a light sentence, also, but I believe that's your
11 parameter.

12 I would ask the court to impose the heaviest sentence
13 possible.

14 He has changed the lives of everybody that he came
15 across in those six weeks.

16 Thank you.

17 THE COURT: That you, Mr. Wright.

18 Who else would like to be heard, ladies and gentlemen?

19 (Pause)

20 Anyone else?

21 (Pause)

22 Everyone sure?

23 (Pause)

24 Thank you, ladies and gentlemen.

25 Mr. Muse comes before the court to be sentenced for

1 hijacking a ship, conspiracy to hijack three ships, hostage
2 taking, conspiracy to engage in hostage taking and conspiracy
3 to engage in kidnapping.

4 I am cognizant that Mr. Muse did not plead to Count 1,
5 the piracy count that carries a mandatory life sentence. He
6 was also permitted not to plead to Counts 4, 7 and 10, the
7 counts relating to possession of machine guns in connection
8 with a crime of violence which also carry mandatory consecutive
9 life sentences.

10 His guidelines calculations does not take into account
11 the hijackings of the Serenity and the Win Far 161 for purposes
12 of calculating his total offense level and, thus, as noted in
13 the presentence report at page 35 Muse has already been
14 afforded some leniency in this case.

15 Now, of course, the guidelines, as you know, ladies
16 and gentlemen, I have calculated the guidelines and have taken
17 them into account.

18 In looking at the history and characteristics of the
19 defendant, of course, thanks to the defense submission I am
20 cognizant of the defendant's upbringing and of the economic
21 conditions and the other conditions that Ms. Doherty mentioned
22 in her presentation.

23 I do note, however, the letter of Heather Cronan, the
24 wife of John Cronan, who was the third engineer on the Maersk
25 Alabama. She writes:

1 Mr. Muse, it is not my family's fault that we were
2 born in this country and you were born in yours. I always had
3 deep sympathy for Somolia, its people and the horrendous
4 difficulties your families are forced through no fault of your
5 own to endure. I have preyed for the people of Somolia and
6 supported those charities that directly provided assistance to
7 you and your people. But the unimaginable struggles the people
8 of Somolia face every day are not my fault. My family did
9 nothing to you, yet you attacked the Maersk Alabama, my husband
10 and our family.

11 I also take into account the government's rendition of
12 the various opportunities that Mr. Muse had to turn back from
13 this course during the course of the facts.

14 I also note, as I set out in detail in the papers, the
15 previous hijackings, the other hijackings which this defendant
16 has engaged in.

17 In connection with his history and characteristics, I
18 also take into account the stipulated fact and the fact which
19 Mr. Wright noted that this defendant was the leader of this
20 organized gang of pirates.

21 I take into account, of course, the nature and
22 circumstances of the crime. And, again, I am cognizant that
23 technically the defendant did not plead to the piracy count.

24 I do note, however, the extraordinary nature of the
25 underlying conduct here. As Professor Kenneth Randell, of the

1 University of Alabama has explained, prosecution of piracy is
2 one of the few items that all nations agree on under what is
3 known as the universality principle. Piracy is an offense that
4 any state can define and punish because pirates have long been
5 considered the enemies of all humanity. Because of this
6 universal concern any state may prosecute piracy regardless of
7 the sites of the offense, the nationality of the offender and
8 the offended. Our Constitution specifically authorizes
9 Congress "to define and punish piracy committed on the high
10 seas."

11 And it is that extraordinary conduct that is the
12 subject of this sentencing.

13 As pointed out in part of the government's submission,
14 the gang of men who violently and mythologically seized control of
15 the Maersk Alabama and other vessels were experienced,
16 coordinated and ruthless in the practice of hijacking, robbery
17 and hostage taking. They were skilled seamen who understood
18 how to track and approach larger vessels from their speed
19 boats. They were comfortable firing and handling AK 47 machine
20 guns.

21 There is no doubt that the pirates were armed as Mr.
22 Wright pointed out. The crew members of the Maersk Alabama
23 said so in interviews with some of the folks present here and
24 the Navy recovered two loaded AK 47 assault rifles, two gun
25 straps each containing three AK 47 magazines and one magazine

1 for a handgun from the lifeboat that Captain Phillips was held
2 in.

3 The men who undertook these actions understood how to
4 board and then commandeer various types of target vessels
5 quickly and efficiently. They did not hesitate to beat, injury
6 and shot at their hostages. They were willing to hold their
7 captives for months and they refused to surrender even having
8 been given numerous opportunities to do so.

9 Their approach was premeditated, organized and
10 relentless. As has been stipulated to by the defendant and his
11 lawyers, he was the leader of that band of pirates.

12 The pirates' owe conduct made clear that they were not
13 merely robbing crew members to support themselves. As Mr.
14 Wright pointed out, they were given the funds in the Maersk
15 Alabama's save, which I understood to be some \$30,000. But
16 that wasn't enough. There's was a far more ambitious and
17 lucrative objective, multi-million dollar ransom payments in
18 exchange for the lives of crew members. They were committed to
19 holding on to their dozens of hostages for as long as was
20 necessary to get paid even if the hostages died as a result.

21 Indeed, the presentence report notes that Mr. Muse
22 said to Captain Phillips that he was looking for a
23 multi-million dollar ransom and observed if the ransom was only
24 a few million dollars for the captain, that wasn't worth it and
25 he rather kill the captain than accept that amount.

1 The extreme level of violence and sadism that Mr. Muse
2 and his men employed, which, as the government points out, was
3 almost all entirely unnecessary to his demands for ransom,
4 demonstrates that Mr. Muse and his men were not, as he
5 suggests, halfhearted participants conscripted into service by
6 hunger or other duress; they appeared to relish even their most
7 depraved acts of physician and psychological violence and
8 abandoned all pretense of humane treatment of their captives.

9 As we know and as the presentence report details,
10 Captain Phillips was held in the lifeboat for several days and
11 Mr. Muse and his crew physically assaulted him and conducted a
12 mock execution of him. They repeatedly threatened to kill him.

13 At one point when Captain Phillips began to chew on
14 the ropes tied around his wrists and his legs, a pirate stuck a
15 stick inside Captain Phillips mouth and after doing it Mr. Muse
16 called the captain Stick Mouth and shined a flashlight into his
17 mouth to make sure the stick stayed in place.

18 At one point when the captain tried to escape the
19 lifeboat by jumping into the water, another of the pirates shot
20 at him until he surrendered.

21 The next day Mr. Muse told personnel on the U.S. S
22 Bainbridge that "we are going to punish him now, we are going
23 to tie him," and so they did, binding his hands and feet and
24 tying his hands to the side of the lifeboat.

25 Mr. Muse also accused Captain Phillips of being dirty

1 and performed a religious ritual involving ropes that caused
2 the captain to believe that he was going to die.

3 Mr. Muse told the captain at that time that he was
4 going to bury him in a shallow area of the ocean because he,
5 the captain, was dirty, and then he said to Captain Phillips,
6 "Not tonight, tomorrow night."

7 The captain understood that Mr. Muse meant that he was
8 going to be killed the following night.

9 At some point one of the pirates hit Captain Phillips
10 in the head so hard that he thought he had been shot in the
11 head and, of course, he started to bleed as a result of that.

12 As the government noted in its presentation, the
13 extraordinary nature of this offense extends to the trauma
14 caused to the various victims.

15 For example, in his letter dated January 22, 2011,
16 Captain Phillips says, "I am writing this letter on behalf of
17 all American mariners, American as well as my fellow brothers
18 and sisters sailing on all the flags of the world."

19 He continues:

20 The mariners of the world have to deal with piracy
21 with limited means and assistance.

22 He talks about some of the areas and he says, it
23 affects us in our daily lives and it is not a Disneylandesque
24 problem. These are not Johnny Depps. They threaten seamen's
25 lives repeatedly, they shot at us, they deprive us of rights

1 that they themselves complain about. They assault us, deny us
2 food, water and have a general disregard for mariners. They
3 terrorize mariners with mock killings, telling us that they
4 will kill us tomorrow, next week, in an hour. They have killed
5 people. Many people could be killed while they attempt to take
6 over one of our ships. I was almost hit on three different
7 occasions by their rifle fire. They have no compunction with
8 beating people to bending them to their ways and be
9 subservient.

10 He continues:

11 Most pirates are on a catch and release program.
12 There is no punishment if they are caught. We must accept as a
13 legal system the burden of punishing these pirates as many
14 countries do not.

15 Not all Somolians are pirates. These pirates choose
16 their way of life with total disregard to their victims. They
17 threaten to kill me on multiple occasions. They put weapons in
18 my face with sneers on their faces, they slapped and hit me
19 multiple times. This person was their leader and he just does
20 not care about others. They held a gun to my head and pulled
21 the trigger repeatedly to try and control me.

22 My family had to endure the five days worrying and
23 wondering what was going to happen and he was just as much a
24 terrorist to them as to me.

25 I ask not for revenge or brutality, only for justice

1 for me, my family and my fellow sailors who ply the world's
2 waters and abide by the world's laws. He has had his days in
3 court. When do the victims get theirs?

4 I note the letter of John Cronan, also a crew member
5 on the Maersk Alabama. He writes:

6 I have been a United States merchant marine for 28
7 years. I have sailed to all parts of the world and under a
8 wide range of conditions. Until April 8, 2009 I never once
9 feared for my life. I am not a soldier, I never desired to be
10 a soldier, I just want to go to work and provide for my family.

11 He goes on:

12 I was simply doing an honest day's work when you, Mr.
13 Muse, chose to climb the side of my ship armed with automatic
14 weapons knowing my shipmates and I were unarmed. We were
15 delivering food aid for your people. You boarded the Maersk
16 Alabama shooting at us.

17 He goes on to talk about the 130 degree heat that Mr.
18 Wright told us about.

19 He says, I looked into the faces of my shipmates and
20 feared some of them would not survive the horrible smothering
21 heat and I preyed to my God that I would not be one of them. I
22 held my daughter's pictures in the dark praying I would have
23 the opportunity to tell them how much I loved them one more
24 time.

25 He continues:

1 As a result of PTSD for the first time in my life I am
2 unable to return to work and unable to provide for my family.
3 All of this pails to the effect your actions have had on my
4 children. I have held them in the middle of the night when
5 they had nightmares about you.

6 He said, we captured you, we captured you and it is my
7 conviction that we treated you better than you would have
8 treated us. You gave no regard for me or my family, yet my
9 shipmates and I treated your wound. We gave you food and
10 water. In return you took our captain and left us to chase you
11 still unarmed for many hours.

12 Mr. Cronan's wife Heather, whom I referred to earlier,
13 notes that since returning from the Alabama my husband has
14 suffered tremendously with post-traumatic stress disorder.
15 Most nights he does not sleep and on the nights he does I have
16 learned to wake him from his nightmares with my feet to avoid
17 being struck in the face as he lashes out at pirates in his
18 sleep.

19 Our youngest daughter still has nightmares and has
20 experienced fear that Mr. Muse will somehow escape from prison
21 and come searching for her.

22 She continues:

23 Our family has been financially devastated by Mr. Muse
24 and his colleagues. My husband, a lifelong merchant seaman, is
25 still unable to return to work. John's income as an engineer

1 represented more than half our total household income. As a
2 result of John's unexpected loss of income, my home was lost to
3 foreclosure. The out-of-pocket costs paid to various therapist
4 to help our family heal has totaled to date in the thousands of
5 dollars.

6 Mr. Cronan's daughters write -- Annie writes, I was 12
7 years old when you attacked the Maersk Alabama. My sister was
8 nine. My sister and I woke up that morning hearing our mom
9 crying. We were confused and scared. My mom tried to tell us
10 everything was going to be okay, but the look in her eyes made
11 us know this was serious. We never thought anything could
12 happen to our parents. My sister has nightmares and I sleep in
13 her room because she is too scared to sleep by herself since
14 the attack. Our stepdad is sad so much now.

15 She goes on:

16 We don't understand why you would steal from a ship
17 that was delivering food to your country.

18 I note the letter from Kelley Baughman Fisher, who is
19 the wife of first assistant engineer Matthew Fisher.

20 Ms. Fisher is also a merchant mariner working as an
21 engineer aboard U.S. flagged oil tankers so she knows where of
22 she speaks.

23 She says, my husband came home from the Alabama in
24 April of 2009 a changed man. While he did not suffer from the
25 more physically apparent symptoms of PTSD as some of the crew

1 did, his personality and actions began to change. Our marriage
2 began to deteriorate though I did not realize it until it was
3 too late to save it. We are in the process of divorcing right
4 now.

5 I have become close with a number of the crew members
6 of the Alabama and their families in the past year and a half.
7 I have seen these friends go through incredible hardships
8 through the attack, mental, physical, emotional and financial.
9 We turn to each other through these problems because there are
10 very few people in this country who can understand what we went
11 through and what we continue to go through as a result of the
12 attack on the Alabama.

13 And so, ladies and gentlemen, I take into account the
14 history and characteristics of this defendant and the nature
15 and circumstances of the offense.

16 Moving to the paragraph 2 factors under Section
17 3553(a), I think it is apparent by now that a lengthy sentence
18 is required to reflect the seriousness of the offense, to
19 promote respect for the law and to provide just punishment for
20 such an extraordinary offense.

21 Paragraph B discusses the need to afford adequate
22 deterrence to criminal conduct.

23 The presentence report points out that the March 16,
24 2009 report of the Secretary General of the United Nations to
25 the United Nations Security Council addressed the threat that

1 piracy and armed robbery at sea pose to the security of
2 international navigation off the coast of Somolia. According
3 to the report, in 2008 there were 111 reported incidents of
4 piracy or armed robbery at sea against ships off the coast of
5 Somolia. The report states that this number constitutes an
6 annual increase of nearly 200 percent when compared to the
7 number of reported incidents in 2007.

8 The report also states that by the end of 2008 one
9 group of pirates based in Somolia was believed to have earned
10 approximately \$30 million in ransom payments.

11 And I take into account that this report was in 2007
12 and 2008. That would be the year before the events at issue
13 here.

14 This documented enormous increase in the reporting
15 incidents of piracy or armed robbery at sea emphasizes the
16 importance of general deterrence as a sentencing factor here.
17 Indeed, I think it is fair to say that general deterrence of
18 this type of conduct is the most important sentencing factor
19 brought to bear in this case.

20 Of course, paragraph C talks about the need to protect
21 the public from further crimes of this defendant.

22 I am cognizant of the points made by Ms. Doherty in
23 her sentencing submission and in her presentation today about
24 the need to protect the public from crimes of this defendant,
25 and I'm also, of course, cognizant of her argument that a

1 sentence above the lower end of the guideline range is greater
2 than what is necessary to meet the sentencing factors,
3 especially the factors of deterrence.

4 I disagree there and, indeed, it is this marked uptick
5 in piracy and armed robbery at sea and the need to deter other
6 individuals from undertaking this kind of conduct that counsels
7 for the higher sentence and which makes the higher sentence
8 absolutely necessary to fulfill the sentencing factors.

9 The other factors listed in paragraph 3553(a)(2) are
10 not particularly relevant here and carry virtually no weight in
11 contrast to the need for general deterrence here.

12 Accordingly, counsel, taking into account all of the
13 sentencing factors, it is my intention to impose a sentence of
14 405 months on Counts 5, 6, 8 and 9 to run concurrently, 204
15 months on Counts 2 and 3 for a total of 405 months.

16 It is my intention to impose a period of three years
17 of supervised release on Counts 2 and 3, five years on Counts 5,
18 6, 8 and 9 to run concurrently for a total of five years.

19 It is not my intention to impose a fine.

20 It is my intention to impose the amount of \$550,000 in
21 restitution as set out by the presentence report, and thanks to
22 Mr. DeMarco's submission on behalf of Maersk lines \$550,000 is
23 estimated to be the unreimbursable costs incurred by the Maersk
24 line in connection with these unfortunate activities.

25 It is also my intention to impose the mandatory \$600

1 special assessment.

2 It is my intention to accept the suggested special
3 terms and conditions of supervised release, including providing
4 access to financial information, not opening lines of credit,
5 et cetera, unless in compliance with the installment payment
6 schedule, undergoing substance abuse treatment, obeying the
7 immigration laws and submission to a search.

8 It is also my intention to adopt the restitution plan
9 set out at page 38 of the presentence report.

10 Counsel, is there any reason such a sentence should
11 not be imposed?

1 MR. WEINSTEIN: No, your Honor.

2 MR. McGUIRE: No, your Honor.

3 MS. DOHERTY: Your Honor, we may just have one
4 request.

5 THE COURT: But of course.

6 MS. DOHERTY: Just about the designation issue. I
7 don't know if this is now appropriate.

8 THE COURT: May I turn to you for that in just a
9 moment, please.

10 MS. DOHERTY: Thank you, your Honor.

11 THE COURT: Thank you, Mr. Doherty.

12 Mr. Muse, you are sentenced, sir, to a period of 405
13 months incarceration on Counts 5, 6, 8 and 9, 204 months on
14 Counts 2 and 3 for a total of 405 months incarceration.
15 Following that period you will spend a period of five years on
16 supervised release on Counts 5, 6, 8 and 9, three years on
17 Counts 2 and 3 for a total of five years of supervised release.

18 During that period you will comply with all of the
19 standard terms and conditions of supervised release. Among
20 them are that you not commit another federal, state or local
21 crime; you not illegally possess a controlled substance; and
22 you not possess a firearm or other destructive device.

23 In addition to those and all of the other standard
24 terms and conditions of supervised release you will provide the
25 probation officer with access to any requested financial

1 information. You will not incur any new credit charges or open
2 any additional lines of credit without the approval of the
3 probation officer unless you are in compliance with the
4 installment payment schedule for restitution.

5 You will participate in a program approved by the
6 probation officer for substance abuse. That program will
7 include testing to determine whether you have used drugs or
8 alcohol.

9 The court authorizes the release of available drug
10 treatment evaluations and reports to the substance abuse
11 treatment provider as approved by the probation officer.

12 You might be required to contribute some or all of the
13 costs of the program depending on your ability to pay and the
14 availability of third party payment.

15 Also during the periods of supervised release you will
16 obey the immigration laws of this country and comply with all
17 directives of the immigration authorities.

18 During that period you will also submit your person,
19 residence, place of business, vehicle or any other premises
20 under your control to a search on the basis that the probation
21 officer has reasonable belief that contraband or evidence of a
22 violation of the conditions of your relation may be found
23 there.

24 The search must be conducted at a reasonable time and
25 in a reasonable manner. Failure to submit to such a search may

1 be grounds for revoking your supervised release.

2 It is your obligation to inform other residents of the
3 premises that the premises might be subject to a search under
4 this condition.

5 As I noted, I do not impose a fine, but I impose the
6 restitution amount of \$550,000 to be paid to the clerk of the
7 court, United States District Court, 500 Pearl Street, New
8 York, New York. From time to time the clerk will disburse
9 amounts to Maersk Lines.

10 During the period of incarceration if you are engaged
11 in a Bureau of Prisons non-UNICOR work program you will pay \$25
12 per quarter toward criminal financial penalties. If you
13 participate in the Bureau of Prisons UNICOR program at a grade
14 1 through 4, you will pay 50 percent of your monthly UNICOR
15 earnings toward the civil financial penalties consistent with
16 Bureau of Prisons regulations at 28 C.F.R., Section 545.11.

17 And finally, sir, I impose the mandatory \$600 special
18 assessment and that should be paid promptly.

19 Following release, restitution payments shall be paid
20 in monthly installments also to the clerk of court at a rate no
21 less than ten percent of your gross monthly income.

22 It is my duty to inform you, sir, that unless you have
23 waived it, you have the right to appeal this sentence and you
24 might have the right to appeal in forma pauperis, which means
25 as a poor person with the waiver of certain fees and expenses.

1 Ms. Doherty, you wish to speak about a designation?

2 MS. DOHERTY: Yes, your Honor. We just ask
3 respectfully that the court make a number of recommendations to
4 the Bureau of Prisons.

5 First, that if possible, consistent with security
6 needs, that he be housed with other Somali speaking inmates.

7 Then that he would receive mental health treatment and
8 also educational opportunities, including most significantly, I
9 think English language instructions to lessen his isolation
10 over these years.

11 THE COURT: It is so recommended.

12 MS. DOHERTY: Thank you, your Honor.

13 THE COURT: Is there anything further, ladies and
14 gentlemen?

15 MR. McGUIRE: Your Honor, just two very minor issues.

16 With respect to restitution, if your Honor permits,
17 probation has provided the government with the address to which
18 the clerk --

19 THE COURT: Would you read it out?

20 MR. McGUIRE: I will put it into the record.

21 Restitution should be directed to the following
22 address:

23 Maersk Line Limited, One Commercial Place, 20th floor,
24 Norfolk, Virginia 23510-2103 with the notation Maersk Alabama
25 restitution.

1 And the second issue, your Honor, is the government
2 would respectfully move now for the dismissal of the four open
3 counts against the defendant.

4 THE COURT: So ordered.

5 Anything else, ladies and gentlemen?

6 MS. DOHERTY: No, your Honor.

7 MR. McGUIRE: No, your Honor.

8 THE COURT: Counselor, thank you for your excellent
9 presentations.

10 Good morning, ladies and gentlemen.

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